

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

## **An Act To Permit Video Gaming for Money Conducted by Nonprofit Organizations**

**Be it enacted by the People of the State of Maine as follows:**

**Sec. 1. 8 MRSA §372, sub-§2, ¶I**, as amended by PL 2003, c. 673, Pt. MM, §1, is further amended to read:

I. Carry on a continuous study and investigation of the lotteries throughout the State and the operation and administration of similar laws that may be in effect in other jurisdictions. The director, subject to the prior approval of the commission, may enter into a written agreement with a multijurisdictional lottery association for the operation, marketing and promotion of a joint lottery or joint lottery games with other jurisdictions.

Any final agreement entered into with a multijurisdictional lottery association must provide that the director has the authority to terminate the agreement upon the provision of reasonable notice, not to exceed 6 months. The final agreement must further provide that the director may terminate the agreement at any time, without prior notice, in the event that the director's authority is withdrawn or limited by law; and

**Sec. 2. 8 MRSA §372, sub-§2, ¶J**, as enacted by PL 1991, c. 780, Pt. Y, §112, is amended to read:

J. Assign duties as necessary to a designee; and

**Sec. 3. 8 MRSA §372, sub-§2, ¶K** is enacted to read:

K. Carry out the duties assigned to the director under Title 17, chapter 130, including developing and maintaining a central computer system to monitor licensed video gaming terminals and coordinating and cooperating with the Chief of the State Police in implementing and enforcing that chapter.

**Sec. 4. 8 MRSA §374, sub-§1, ¶L**, as amended by PL 1997, c. 301, §1, is further amended to read:

L. The apportionment of the total annual revenue accruing from the sale of lottery tickets or shares and from all other sources for the payment of prizes to the holders of winning tickets or shares; for the payment of costs incurred in the operation and administration of the lotteries, including the expenses of the commission and the costs resulting from any contract or contracts entered into for promotional, advertising, consulting or operational services or for the purchase or lease of lottery equipment and materials; for the repayment of the money appropriated to the State Lottery Fund; and for transfer to the General Fund for distribution pursuant to section 387; and

**Sec. 5. 8 MRSA §374, sub-§1, ¶M**, as enacted by PL 1997, c. 301, §2, is amended to read:

M. The imprinting on all lottery tickets sold in the State of the overall odds of winning a prize for each game; and

**Sec. 6. 8 MRSA §374, sub-§1, ¶N** is enacted to read:

N. Rules to administer and enforce Title 17, chapter 130, which may be adopted jointly with the Chief of the State Police. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

**Sec. 7. 17 MRSA §1847** is enacted to read:

**§ 1847. Applicability**

Except as expressly provided in chapter 130, this chapter does not apply to video gaming terminals.

**Sec. 8. 17 MRSA c. 130** is enacted to read:

**CHAPTER 130**

**VIDEO GAMING TERMINALS**

**SUBCHAPTER 1**

**GENERAL PROVISIONS**

**§ 3911. Definitions**

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

**1. Associated equipment.** "Associated equipment" means any proprietary device, machine or part used in the manufacture or maintenance of a video gaming terminal, including, but not limited to, integrated circuit chips, printed wired assemblies, printed wired boards, printing mechanisms, video display monitors and metering devices.

**2. Director.** "Director" means the Director of the Bureau of Alcoholic Beverages and Lottery Operations in the Department of Administrative and Financial Services.

**3. Drug abuser.** "Drug abuser" has the same meaning as set forth in Title 5, section 20003, subsection 10.

**4. Drug addict.** "Drug addict" has the same meaning as set forth in Title 5, section 20003, subsection 11.

**5. Drug-dependent person.** "Drug-dependent person" has the same meaning as set forth in Title 5, section 20003, subsection 12.

**6. Engaged in reckless or negligent conduct.** "Engaged in reckless or negligent conduct" means engaged in conduct that in fact created a substantial risk of death, serious bodily injury or bodily injury to another human being while either consciously disregarding or failing to be aware of a risk that the conduct would cause such a result, and the disregard or failure to be aware of that risk, when viewed in light of the nature and purpose of the conduct and the circumstances known to the actor, involved a gross deviation from the standard of conduct that a reasonable and prudent person would observe in the same situation.

**7. Formal charging instrument.** "Formal charging instrument" means a complaint, an indictment, an information, a juvenile petition or other formal written accusation against a person for some criminal or juvenile offense.

**8. Fugitive from justice.** "Fugitive from justice" has the same meaning as set forth in Title 15, section 201, subsection 4 or 18 United States Code, Section 921(a)(15) or a person subject to an outstanding warrant of arrest in this State or any other jurisdiction for a crime punishable by imprisonment for one year or longer.

**9. Illegal gaming machine.** "Illegal gaming machine" or "illegal machine" means a machine as defined in section 1831, subsection 9 that:

- A. Is required to be licensed under this chapter, but is not so licensed;
- B. Is required to be licensed under chapter 62, but is not so licensed; or
- C. Is licensed under either chapter 62 or this chapter, but is being operated in a manner that violates the license.

**10. Licensee.** "Licensee" means a person licensed by the Chief of the State Police under section 3921 to operate a video gaming terminal.

**11. Net terminal income.** "Net terminal income" means money inserted into a video gaming terminal minus credits paid out in cash.

**12. Operate.** "Operate" means to offer for use.

**13. Payback value.** "Payback value" means the value of credits granted to players by a video gaming terminal compared to the value of money inserted into the terminal by players, calculated as a percentage on an annual basis.

**14. Person.** "Person" means an individual, corporation, association or partnership.

**15. Uniform location agreement.** "Uniform location agreement" means a written agreement in a form prescribed by the Chief of the State Police between a video gaming terminal licensee and a video gaming terminal wholesaler that governs the terms and conditions of the agreement, including the placement of video gaming terminals on the premises of the licensee.

**16. Video gaming terminal.** "Video gaming terminal" or "terminal" means a machine that, upon insertion of coin or currency, is available to play or simulate the play of a video game authorized by the Chief of the State Police, including, but not limited to, poker, keno, blackjack and line games using a video display and microprocessor, in which by chance the player may receive free games or credits that may be redeemed for cash.

**17. Video gaming terminal manufacturer.** "Video gaming terminal manufacturer" means a person who assembles or produces video gaming terminals or associated equipment for sale or use in this State.

**18. Video gaming terminal wholesaler.** "Video gaming terminal wholesaler" means a person who sells video gaming terminals or associated equipment for distribution in this State.

### **§ 3912. License required**

A person may not manufacture, sell, operate or place a video gaming terminal for use in this State unless the person is licensed to do so by the Chief of the State Police under this chapter. A person may not place for use or operate a video gaming terminal in this State unless the terminal is licensed by the Chief of the State Police under section 3923.

### **§ 3913. Administration and enforcement**

The Chief of the State Police and the director shall administer and enforce the provisions of this chapter as specified in this chapter.

### **§ 3914. Powers and duties of Chief of State Police**

**1. Powers.** In addition to powers conferred by any other provision of law, the Chief of the State Police may:

- A. Regulate, supervise and exercise general control over the operation of video gaming terminals;
- B. Investigate the direct or indirect ownership or control of a video gaming terminal or associated equipment by any licensee;
- C. Adopt rules necessary to administer and enforce this chapter, including adopting rules jointly with the State Liquor and Lottery Commission. Rules adopted pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2A;
- D. In any investigation conducted under this chapter, issue subpoenas to compel the attendance of witnesses and the production of evidence relevant to any fact at issue; and
- E. Approve or disapprove terms and conditions of uniform location agreements.

**2. Duties.** The Chief of the State Police shall:

A. Investigate or cause to be investigated all complaints made to the Department of Public Safety, Bureau of State Police and all violations of this chapter or the rules adopted under this chapter. A complaint made pursuant to this paragraph must be in writing, signed by the complainant and dated;

B. Adopt rules, which are routine technical rules pursuant to Title 5, chapter 375, subchapter 2A, to prevent undesirable conduct relating to the operation of video gaming terminals, including the following:

(1) The practice of any fraud or deception upon a player of a video gaming terminal;

(2) The presence of a video gaming terminal on premises that may be unsafe due to fire hazard or other such conditions;

(3) The use of obscene advertising;

(4) The solicitation on a public way of persons to play video gaming terminals;

(5) The infiltration of organized crime into the operation of video gaming terminals;

(6) The presence of disorderly persons in a location where video gaming terminals are in use; and

(7) The use of the word "casino" to describe any video gaming terminal licensed under this chapter or as the name or any part of the name of the licensed premises or of a portion of the premises where the video gaming terminal is located;

C. Direct the director to disable any video gaming terminal if the Chief of the State Police has reason to believe that:

(1) A person has illegally tampered with the terminal as described in section 3944, subsection 2, paragraphs A and B;

(2) The funds from the terminal have not been distributed, deposited or allocated in accordance with section 3933;

(3) The terminal does not meet the licensure requirements of this chapter; or

(4) The licensee is guilty of criminal conduct; and

D. Approve uniform location agreements submitted by licensees pursuant to section 3922, subsection 2.

## **§ 3915. Powers and duties of director**

**1. Powers.** In addition to powers conferred by any other provision of law, the director may:

A. Propose to the State Liquor and Lottery Commission for adoption rules necessary to administer and enforce this chapter, including rules to be adopted jointly with the Chief of the State Police. Rules adopted by the commission pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2A; and

B. Subject to approval of the State Liquor and Lottery Commission and to any applicable laws relating to public contracts, enter into a contract for performance of the director's duties under this chapter. All contracts must be awarded in accordance with rules adopted by the Department of Administrative and Financial Services pursuant to Title 5, chapters 141 to 145 and Title 5, sections 1812 and 1813. A contract awarded or entered into by the director may not be assigned by the holder of the contract, except by specific approval of the commission.

**2. Duties.** The director shall:

A. Develop, install and test a central computer system with continuous online polling to all licensed video gaming terminals to provide auditing program information. The system may not limit participation to only one manufacturer of video gaming terminals by either the cost of implementing the necessary program modifications to communicate or an inability to communicate with the central computer system. In developing the system, the director shall allow for a 5year phase-in period in accordance with section 3923, subsection 3 for licensees to acquire equipment capable of interfacing with a central computer system;

B. Maintain and monitor the central computer system to ensure compliance with this chapter;

C. Attempt to determine the cause of any video gaming terminal malfunction detected by the central computer system and notify the Chief of the State Police of any suspected tampering with a video gaming terminal or any other violation of this chapter or the rules adopted under this chapter;

D. Cause the central computer system to disable a video gaming terminal as directed by the Chief of the State Police in accordance with section 3914, subsection 2, paragraph C;

E. Collect funds due the State under section 3933 and deposit them in the Video Gaming Fund established in section 3934;

F. Immediately notify the Chief of the State Police of the failure of any licensee to comply with section 3933;

G. Certify monthly to the Treasurer of State, the State Liquor and Lottery Commission and the Commissioner of Administrative and Financial Services a full and complete statement of all video gaming terminal revenue, credits disbursed by licensees, administrative expenses and the allocation of net terminal income for the preceding month;

H. Submit by January 15th an annual report to the Governor and the joint standing committee of the Legislature having jurisdiction over gaming matters. The report must include information on video gaming terminal revenue, credits disbursed by licensees, administrative expenses and the allocation of net terminal income for the preceding year;

I. Prepare and submit to the Commissioner of Administrative and Financial Services a budget; and

J. Cooperate with the Chief of the State Police in implementing and enforcing the provisions of this chapter.

### **§ 3916. Applicability of chapter 62**

Except as expressly provided in this chapter, chapter 62 does not apply to video gaming terminals. Section 1838 relating to use of proceeds applies to the use of net terminal income by licensees under this chapter.

## **SUBCHAPTER 2**

### **LICENSING**

### **§ 3921. License to operate**

**1. Eligible entities.** The Chief of the State Police may issue a license to operate a video gaming terminal to a person who:

A. Is eligible for a license to conduct games of chance pursuant to section 1832;

B. Is exempt from federal taxation under the United States Internal Revenue Code, Section 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10) or 501(c)(19); and

C. Owns or leases the premises upon which the video gaming terminal will be located and uses those premises to fulfill the primary charitable or nonprofit purpose of the organization. If the premises are leased, the lease must run for a term longer than the license term.

Notwithstanding paragraph B, an organization that holds a license under section 1832 to operate an electronic video machine on the effective date of this chapter is eligible to apply for and receive a license under this section to operate a video gaming terminal for up to 18 months, as long as the organization applies for federal tax status as specified in paragraph B. If the Chief of the State Police determines that the organization is making a good faith effort to secure the required tax status and is likely to be given such status, the Chief of the State Police may extend the term of the license for an additional 6 months

to allow the United States Internal Revenue Service time to complete processing the application for tax status. If the organization applied for such status and was rejected within 3 years of the effective date of this section, that organization is not eligible under this subsection.

**2. Qualifications for license.** A person may be issued a license to operate a video gaming terminal if the person is eligible for a license under subsection 1, has completed application forms as provided by the Chief of the State Police and has sufficient financial assets to meet the financial obligations imposed by this chapter and a method acceptable to the Chief of the State Police for meeting those obligations, and the individual applicant for the license and, when the person applying is a corporation, association or partnership, each officer, director or partner of the corporation, association or partnership:

- A. Has not been convicted in the State or any other jurisdiction of a misdemeanor crime of domestic violence, within the meaning of 18 United States Code, Section 921(a)(33);
- B. Does not have a formal charging instrument pending in the State or any other jurisdiction for a misdemeanor crime of domestic violence, within the meaning of 18 United States Code, Section 921(a)(33);
- C. Has not been convicted in the State or any other jurisdiction within the past 3 years of 3 or more crimes punishable by imprisonment for less than one year, if those convictions arose from different criminal episodes;
- D. Has not within the past 3 years engaged in reckless or negligent conduct that is substantiated by information of record by a governmental entity;
- E. Is current in payment of all taxes, interest and penalties owed to the State or to a municipality, excluding items under formal dispute or appeal pursuant to applicable statutes or ordinances;
- F. Has not been involved in any criminal activity and has not been convicted of a crime punishable by one year or more of imprisonment in any jurisdiction unless at least 10 years have passed since satisfactory completion of the sentence or probation imposed by the court for the crime;
- G. Has not been convicted of a violation of this chapter or chapter 62 or of equivalent laws in any other state;
- H. Has not been adjudicated within the past 3 years of having committed a juvenile offense involving conduct that, if committed by an adult, would cause the Chief of the State Police to refuse to approve a license application under this section;
- I. Is not a fugitive from justice, a drug abuser, a drug addict, a drug-dependent person, an illegal alien or a person who was discharged from the United States Armed Forces under dishonorable conditions within 3 years prior to the date of application;
- J. Has completed the application form and complied with the requirements of section 3925; and



K. Has not knowingly made a false statement of material fact to the Chief of the State Police in applying for a license under this chapter or chapter 62.

**3. Local approval of application for license.** The Chief of the State Police may not issue a license to operate a video gaming terminal until the initial application for the license is first approved by the municipal officers of the municipality in which the applicant's premises are located or, if the premises are located in an unincorporated place, until the application is approved by the county commissioners of the county in which the unincorporated place is located.

**4. Hearing process.** The municipal officers or, in the case of an unincorporated place, the county commissioners of the county in which the unincorporated place is located may hold a public hearing for the consideration of applications for new video gaming terminal licenses. The municipal officers or county commissioners may hold a public hearing for the consideration of requests for renewal of licenses.

A. The municipal officers or the county commissioners shall provide, at the applicant's prepaid expense, public notice of a hearing held under this section by causing a notice stating the time and place of hearing to appear at least 6 consecutive days before the date of the hearing in a daily newspaper having general circulation in the municipality or unincorporated place where the applicant's premises are located or 2 consecutive weeks before the date of the hearing in a weekly newspaper having general circulation in the municipality or unincorporated place where the applicant's premises are located.

B. In granting or denying an application, the municipal officers or the county commissioners shall indicate the reasons for their decision and provide a written statement of their reasons to the applicant.

## **§ 3922. Placement and ownership of terminals**

**1. Number of terminals; location.** No more than 5 video gaming terminals may be placed on the premises of a licensee. A terminal may not be placed in any location other than the premises of the licensee. A licensee must own or control the premises on which a video gaming terminal is located. The area in which the terminals are located must be designed to permit the licensee or an agent of the licensee to see and control the area at all times to ensure compliance with the provisions of this chapter.

**2. Uniform location agreement.** A location containing a video gaming terminal must be subject to a uniform location agreement. A copy of the agreement must be submitted to the Chief of the State Police. The Chief of the State Police may approve or disapprove any uniform location agreement. If the uniform location agreement is disapproved, the Chief of the State Police shall provide written reasons for the denial.

**3. Appeal to commissioner.** A licensee denied approval of a uniform location agreement under subsection 2 may appeal the decision of the Chief of the State Police to the Commissioner of Public Safety. The commissioner shall hold a hearing with the licensee and the Chief of the State Police or the chief's designee before rendering a decision on the appeal. The commissioner shall render a decision within 30 days of the hearing.

### **§ 3923. Licensing of terminals**

**1. License required.** A video gaming terminal may not be placed for public use or operated in this State unless the terminal is licensed by the Chief of the State Police under this section. The video gaming terminal license must be prominently displayed on the terminal. Language describing the odds of winning the game and warning of the danger of compulsive gambling must also be prominently displayed on the terminal.

**2. Requirements for license.** To be licensed, a video gaming terminal:

- A. May offer only games permitted by the Chief of the State Police;
- B. May not have any means of manipulation that affect the random probabilities of winning a game;
- C. May not directly dispense coins, cash or tokens;
- D. Must have one or more mechanisms that accept coin or cash in the form of bills and that are designed to prevent a person from obtaining credits without paying;
- E. Must be designed to suspend operation until reset if a person attempts, by physical or other tampering, to obtain credits without paying;
- F. After completion of the 5year phase-in period described in subsection 3, must have nonresettable meters housed in a readily accessible locked area in which the terminals are located that keep a permanent record of all cash inserted into the video gaming terminal, credits awarded by the terminal, credits played for video games and credits distributed by tickets made by the terminal's printer;
- G. After completion of the 5year phase-in period described in subsection 3, must be capable of printing a ticket voucher stating the value of the credits for the player at the end of play, the time of day in 24hour format showing hours and minutes, the date, the terminal's serial number, the sequential number of the ticket voucher and an encrypted validation number from which the validity of the credits may be determined;
- H. After completion of the 5year phase-in period described in subsection 3, must have accounting software that keeps an electronic record of information that includes, but is not limited to, total cash inserted into the video gaming terminal, total credits awarded by the terminal, total credits played for video games, total credits distributed by tickets made by the terminal's printer and the payback value of each video game; and

I. After completion of the 5year phase-in period described in subsection 3, must be linked to the central computer system developed under section 3915, subsection 2 to provide auditing program information.

**3. Phase-in period; rules.** Requirements governing the technical capabilities of video gaming terminals must be phased in over a period of 5 years from the effective date of this chapter. The Chief of the State Police shall adopt rules to implement this subsection. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2A.

**4. Amount of play; payback value.** A video gaming terminal may be played for a maximum of \$5 in a single game. A video gaming terminal may not accept more than \$20 at a time. The maximum prize awarded may not exceed the value of \$1,250. The payback value of each type of video game offered by each terminal must be at least 80%.

**5. Examination of prototypes.** The Chief of the State Police and the Attorney General shall examine all prototypes of video gaming terminals and associated equipment for which a video gaming terminal manufacturer seeks a license as required in this chapter. The Chief of the State Police shall require the manufacturer seeking the examination and approval of the video gaming terminal or associated equipment to pay the anticipated actual cost of the examination before the examination occurs. After the examination occurs, the Chief of the State Police shall refund overpayments or charge and collect amounts sufficient to reimburse the Chief of the State Police for underpayments of actual cost. The Chief of the State Police may contract for the examinations of video gaming terminals and associated equipment as required by this subsection.

**6. Illegal gaming machine.** An illegal gaming machine is subject to seizure and forfeiture to the State pursuant to sections 3945 and 3946.

### **§ 3924. Licensing of manufacturer or wholesaler; limitation on ownership**

**1. Qualifications.** To be licensed as a video gaming terminal manufacturer or wholesaler, a person must meet the qualifications set forth in section 3921, subsection 2.

**2. Limitation on ownership.** A partnership, corporation, individual, individual partner or shareholder holding more than 5% of a corporation or an immediate family member of an individual, individual partner or shareholder holding more than 5% of a corporation may not have ownership interests in more than one distributor of video gaming terminals. For the purposes of this subsection, "immediate family member" means a spouse, child, parent, stepchild or stepparent.

### **§ 3925. Applications; investigation**

**1. Form.** An application for a license required under this chapter must be on a form provided by the Chief of the State Police. The application must be signed by the individual applicant or by a duly authorized officer of the partnership, corporation or association applying for the license. The application

must contain, but is not limited to, the following information regarding the individual applicant and each officer, director, partner or owner of any interest in a partnership, corporation or association applying for a license:

A. Full name;

B. Full current address and addresses for the prior 5 years;

C. A record of previous issuances of, refusals to issue and revocations of a license under this chapter; and

D. Answers to the following questions posed in substantially the following form:

(1) "Is there a formal charging instrument now pending against you in this or any other jurisdiction for a crime that is punishable by imprisonment for one year or more or for a misdemeanor crime of domestic violence?";

(2) "Is there a formal charging instrument now pending against you in this or any other jurisdiction for a juvenile offense that involves conduct that, if committed by an adult, would be punishable by imprisonment for one year or more or would constitute a misdemeanor crime of domestic violence?";

(3) "Have you ever been convicted of a crime described in subparagraph (1) or adjudicated as having committed a juvenile offense as described in subparagraph (2)?";

(4) "Are you a fugitive from justice?";

(5) "Are you a drug abuser, drug addict or drug-dependent person?";

(6) "Have you been discharged from the United States Armed Forces under dishonorable circumstances within the past 3 years?";

(7) "Are you an illegal alien?";

(8) "Have you been convicted within the past 3 years of 3 or more crimes punishable by imprisonment of less than one year?";

(9) "Have you been adjudged within the past 3 years to have committed 3 or more juvenile offenses involving conduct that, if committed by an adult, would be punishable by imprisonment of less than one year?"; and

(10) "To your knowledge, have you engaged within the past 3 years in reckless or negligent conduct that is substantiated by the records of a governmental entity?"

**2. Signature as certification.** An applicant, by affixing the applicant's signature to an application for licensure under this chapter, certifies the following:

- A. That the statements made in the application and any document made a part of the application are true and correct;
- B. That the applicant understands that an affirmative answer to one or more of the questions in subsection 1, paragraph D is cause for refusal to issue a license; and
- C. That the applicant understands that knowingly making any false statement in the application or any document made a part of the application is grounds for refusal to issue a license or for revocation or suspension of a license.

**3. Consent to review records.** At the request of the Chief of the State Police, an applicant for licensure under this chapter shall take whatever action is necessary to permit the Chief of the State Police to examine all accounts and records in the applicant's possession, under the applicant's control or under the control of 3rd parties but accessible by consent of the applicant and shall authorize all 3rd parties in possession or in control of those accounts or records to allow the Chief of the State Police or a designee to examine the accounts and records as the Chief of the State Police determines necessary to ascertain:

- A. Whether the information supplied on the application or on any document made a part of the application is true and correct;
- B. Whether each of the requirements of this section has been met; and
- C. Whether the applicant meets the requirements for licensure under this chapter.

This requirement includes taking whatever action is necessary to permit the Chief of the State Police or a designee to have access to confidential records held by banks, the courts, law enforcement agencies and the military for the purposes stated in this subsection.

**4. Investigations; national criminal history record check.** An individual applying for a license under this chapter and a partner of a partnership or an officer, director or holder of any ownership interest of a corporation or association applying for a license as a licensee, video gaming terminal manufacturer or video gaming terminal wholesaler must submit to a background investigation by the Chief of the State Police to verify the applicant's compliance with the requirements of section 3921, subsection 2. In order to determine the eligibility of an applicant for a license under this chapter, the Chief of the State Police shall require the applicant to furnish a full set of fingerprints to enable a criminal background investigation to be conducted. The Chief of the State Police shall submit the fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

**5. Notification of municipal officers.** An applicant for a license to operate a video gaming terminal must send a copy of the application to the municipal officers of the municipality in which the terminal will be operated or, if the terminal will be operated in an unincorporated place, to the county commissioners of the county in which the unincorporated place is located. The applicant must certify in the application that the copy has been sent and must list the names and addresses of the persons to whom the copy was sent.

### **§ 3926. Fees; term of license; nontransferable**

- 1. License levels; fees.** The annual fee for a license issued under this chapter is as follows:
  - A. A license for a video gaming terminal manufacturer is a Level 1 license, and the fee for a video gaming terminal manufacturer license is \$5,000;
  - B. A license for a video gaming terminal wholesaler is a Level 1 license, and the fee for a video gaming terminal wholesaler license is \$5,000; and
  - C. A license to operate a video gaming terminal is a Level 2 license, and the fee for a video gaming terminal operator license is \$600 per terminal.

In addition to the annual license fee, the Chief of the State Police may charge a onetime application fee for a license issued under this chapter in an amount equal to the actual cost of processing the application and performing any background investigations. All fees collected pursuant to this subsection must be deposited directly into the Video Gaming Fund established in section 3934.

**2. Term of license.** A license issued by the Chief of the State Police under this chapter is effective for one year and is renewable annually, unless sooner revoked pursuant to section 3927.

**3. Nontransferable.** A license issued under this chapter is not transferable or assignable.

**4. Levels of license; prohibition against multiple licenses.** A person licensed as a video gaming terminal manufacturer or video gaming terminal wholesaler under section 3924 has a Level 1 license. A licensee under section 3921 has a Level 2 license. A person may not simultaneously hold more than one level of license.

### **§ 3927. Actions relating to licenses**

**1. Refusal to renew license.** The Chief of the State Police may refuse to renew a license issued under this chapter for just cause after a hearing in accordance with the Maine Administrative Procedure Act.

**2. Suspension of license by Chief of State Police.** The Chief of the State Police may suspend a license issued under this chapter for just cause for a period of up to 180 days. The license may be suspended under this subsection only if the Chief of the State Police receives a written statement made under oath from a law enforcement officer establishing probable cause for the suspension. The Chief of

the State Police shall immediately notify the license holder in writing of the suspension and the date the suspension is to take effect. If the license holder wishes to have a hearing, the license holder must notify the District Court in writing within 20 days of the date of the suspension. If a hearing is requested, the license remains suspended pending the outcome of the hearing. If the Chief of the State Police suspends a license under this subsection, the license holder is entitled to a refund, on a pro rata basis, of the license fee for the remainder of the license period.

**3. Suspension or revocation of license by District Court.** The District Court may suspend or revoke a license issued under this chapter for just cause.

**4. Just cause.** As used in this section, "just cause" means:

A. Making or causing to be made a false statement of material fact in obtaining a license under this chapter or in connection with service rendered within the scope of the license issued;

B. Violating or having an agent who violates any provision of this chapter or any rule adopted under this chapter; or

C. Becoming ineligible to hold a license obtained under this chapter.

**5. Ineligibility period following refusal to issue or renew license or revocation of license.** A person may not apply to the Chief of the State Police for any license under this chapter less than 2 years after the Chief of the State Police refuses to issue or renew a license under this chapter with respect to the person or less than 2 years after the District Court revokes a license issued to the person under this chapter.

### **SUBCHAPTER 3**

## **VIDEO GAMING TERMINAL OPERATION; ALLOCATION OF FUNDS**

### **§ 3931. Limits on video gaming terminal use**

**1. Hours of play.** A licensee may not permit a person to play a video gaming terminal at any time other than a time when the sale of liquor is permissible under Title 28A, section 4, subsection 1.

**2. Age of player.** A licensee may not permit a person under 21 years of age to play a video gaming terminal.

**3. Time and money limits imposed by licensee.** A licensee may impose a daily limit on the amount of time or money spent by a person playing a video gaming terminal on the licensee's premises.

**4. Play by members and guests.** Only persons who are members of the licensee organization or guests of those members may play a video gaming terminal on the premises of the licensee.

### **§ 3932. Payment of credits by licensee**

A licensee shall redeem credits for players who earn credits on video gaming terminals located on the premises of that licensee in accordance with rules adopted jointly by the Chief of the State Police and the State Liquor and Lottery Commission. If a person receives a credit redeemable for more than the minimum amount required by federal law to be reported to the United States Internal Revenue Service, the licensee shall require the person to complete a form listing the person's name, address and social security number. The licensee shall promptly send the form to the Department of Administrative and Financial Services, Bureau of Revenue Services.

### **§ 3933. Allocation of funds**

#### **1. Allocation of net terminal income.** Net terminal income must be allocated as follows:

A. Eight percent must be sent to the Treasurer of State for deposit in the Video Gaming Fund established in section 3934;

B. Two percent must be sent to the Treasurer of State for deposit in the Compulsive Gambler Rehabilitation Fund established in Title 22, section 1700B;

C. Sixty-five percent must be paid to the licensee. If a licensee has obtained use of a video gaming terminal from a state-certified distributor, the distributor must be paid, pursuant to an agreement between the licensee and the distributor, out of the funds received by the licensee under this paragraph;

D. Fifteen percent must be transferred to the General Fund as undedicated revenue; and

E. Ten percent must be paid to the host municipality.

**2. Deposit of state funds.** A licensee shall maintain a bank account accessible by the State for the deposit of funds owed to the State under this chapter. The licensee shall deposit in that account the State's share of the net terminal income attributable to the licensee's video gaming terminals. If the day on which funds must be deposited is not a business day, the funds must be deposited on the next business day after that date.

**3. Use of state share.** At the end of each fiscal year beginning after June 30, 2011, the Treasurer of State shall transfer to the Local Government Fund created in Title 30A, section 5681 an amount equal to 10% of the state share of net terminal income derived from video gaming terminals during that fiscal year, net of state administrative costs. Thirty days after the end of each fiscal year, the Treasurer of State shall transfer to the Public Education Fund established in Title 30A, section 5686 all unexpended amounts of the previous fiscal year's revenues to the Local Government Fund, except those needed to fund 2 months of expenses for administering this chapter.

**4. Failure to deposit funds.** A licensee who willfully fails to comply with this section commits a Class C crime. The license of that person may be revoked by the District Court, and the video gaming terminals to which the undeposited funds are attributable may be disabled by the director at the direction of the Chief of the State Police.



**5. Late payments.** All payments under this section not remitted when due must be paid together with a penalty assessment on the unpaid balance at a rate of 1.5% per month.

### **§ 3934. Video Gaming Fund**

**1. Fund created.** There is established the Video Gaming Fund. The fund consists of all revenue payable to the State pursuant to sections 3926 and 3933 and all other money credited or transferred to the fund from any other fund or source pursuant to law.

**2. Use of money.** The money in the Video Gaming Fund may be used only:

A. For expenses incurred in implementing and enforcing this chapter;

B. For payment to the Local Government Fund pursuant to section 3933;

C. For payment to the Public Education Fund established in Title 30A, section 5686; and

D. For payment to the Compulsive Gambler Rehabilitation Fund established in Title 22, section 1700B.

## **SUBCHAPTER 4**

### **ENFORCEMENT AND PENALTIES**

#### **§ 3941. Reports; records**

**1. Reports; records.** The Chief of the State Police or the director shall obtain from a licensed video gaming terminal, licensed video gaming terminal manufacturer, licensed video gaming terminal wholesaler or licensee whatever records and reports the chief or the director considers necessary for the administration and enforcement of this chapter.

**2. Location.** A person holding a license under this chapter shall maintain all records required by this chapter or by rules adopted under this chapter at the primary business office within this State of the license holder or, in the case of a licensee, at the licensee's primary business office or on the premises where the video gaming terminal is operated. The primary business office must be designated in the license application. All records must be open to inspection by the Chief of the State Police, the director or the designee of either of them, and a person holding a license under this chapter may not refuse the Chief of the State Police, the director or the designee of either of them the right to inspect or audit the records. Refusal to permit inspection or audit of the records is not a crime under this chapter but does constitute grounds for revocation of the license.

#### **§ 3942. Access to premises, equipment, records**

A person holding a license under this chapter shall permit the Chief of the State Police or the chief's designee to inspect any equipment, prizes, records or items and materials used or to be used in the operation of any video gaming terminal manufactured, owned or operated by that person. A person holding a license under this chapter shall consent in writing to the examination of all accounts, bank

accounts and records in the license holder's possession or under the license holder's control and shall authorize all 3rd parties in possession or in control of those accounts or records to allow the Chief of the State Police or the chief's designee to examine the accounts and records as the chief determines necessary.

### **§ 3943. Contempt**

If a witness in a case involving a violation of this chapter refuses to obey a subpoena issued by the Chief of the State Police or to give any evidence relevant to proper inquiry by the chief, the Attorney General may petition the Superior Court in the county where the refusal occurred to find the witness in contempt. The Attorney General shall cause to be served on the witness an order requiring that witness to appear before the Superior Court to show cause why that witness should not be adjudged in contempt. The court shall, in a summary manner, hear the evidence and, if it is such as to warrant the court to do so, punish the witness in the same manner and to the same extent as for contempt committed before the Superior Court or with reference to the process of the Superior Court.

### **§ 3944. Violations**

**1. Crimes by licensee.** A licensee who performs any of the following acts commits a Class D crime:

- A. Permitting a person under 21 years of age to play a video gaming terminal licensed pursuant to this chapter;
- B. Permitting a person to play a video gaming terminal licensed pursuant to this chapter at a time other than a time when the sale of liquor is permissible under Title 28A, section 4, subsection 1;
- C. Extending credit to a person in order for the person to play a video gaming terminal;
- D. Permitting a person to use a credit card as a method of payment for playing a video gaming terminal; and
- E. Permitting a visibly intoxicated person to play a video gaming terminal.

**2. Class C crimes by any person.** A person who performs any of the following acts commits a Class C crime:

- A. Tampering with a video gaming terminal with intent to interfere with the proper operation of that terminal;
- B. Manipulating or attempting to manipulate the outcome, payoff or operation of a video gaming terminal by physical tampering or any other means;
- C. Manufacturing, distributing, selling, operating or placing a video gaming terminal for use in this State without a license or manufacturing, distributing, selling, operating or placing an illegal gaming machine for use in this State; and
- D. Placing for public use or operating an unlicensed video gaming terminal in this State.

**3. Class D crimes by any person.** A person who violates a provision of this chapter or a rule adopted under this chapter for which a specific penalty is not provided commits a Class D crime.

### **§ 3945. Seizure and forfeiture of illegal gaming machines**

**1. Forfeiture.** An illegal gaming machine, including any monetary contents, is subject to forfeiture to the State.

**2. Court jurisdiction.** An illegal gaming machine and any monetary contents may be declared forfeited by any court that has jurisdiction over the illegal machine or final jurisdiction over any related criminal proceeding brought under this chapter or by the Superior Court for Kennebec County. Property subject to forfeiture may be kept or stored at any location within the territorial boundaries of the State and is subject to the authority of any court in which a petition seeking the forfeiture of that property is filed.

**3. Procedure.** Forfeitures under this section must be accomplished by the following procedure.

**A.** A district attorney or the Attorney General may petition the Superior Court in the name of the State in the nature of a proceeding in rem to order forfeiture of an illegal gaming machine and any monetary contents. The petition must be filed in the court having jurisdiction over the property.

**B.** The proceeding is an in rem civil action, in which the State has the burden of proving all material facts by a preponderance of the evidence.

**C.** The court shall order the State to give notice of the pendency of the action and the right to be heard by certified or registered mail or hand delivery by a deputy sheriff to any person who appears to have an interest in the illegal gaming machine and any monetary contents. Receipt by a person then licensed to operate a motor vehicle in the State is presumed when notice is mailed to the last known address of that person on file with the Department of the Secretary of State, Bureau of Motor Vehicles.

**D.** The court shall promptly, but not less than 2 weeks after notice, hold a hearing on the petition under paragraph A after an answer is filed by a person served with notice under paragraph C. At the hearing, the court shall hear evidence and make findings of fact and enter conclusions of law.

**E.** Based on the findings and conclusions under paragraph D, the court shall issue a final order from which the parties have a right of appeal. The final order must provide for disposition of the illegal gaming machine and any monetary contents by the State. Any revenue generated by the disposition of the illegal machine and any monetary contents of the machine must be used to pay the reasonable expenses of the forfeiture proceedings, seizure, storage, maintenance of custody, advertising and notice. The balance, if any, must be deposited in the General Fund.

**4. Records.** Any law enforcement officer, department or agency having custody of an illegal gaming machine or any monetary contents of an illegal gaming machine or having disposed of the illegal gaming machine or any monetary contents shall keep and maintain during the pendency of the action full and complete records in accordance with this subsection. Upon issuance by the court of a final order

ordering the disposition, destruction or return of the illegal machine or the monetary contents, the officer, department or agency shall transmit a copy of those records to the Department of Public Safety for inclusion into a centralized record.

A. The records must show:

(1) From whom the illegal gaming machine and any monetary contents were received;

(2) Under what authority the illegal machine and any monetary contents are held, received or disposed of;

(3) To whom the illegal machine and any monetary contents are delivered;

(4) The date and manner of destruction or disposition of the illegal machine; and

(5) The exact kind, quantity and form of the illegal gaming machine and the exact amount of any monetary contents of a machine held in custody or disposed of.

B. The records must be open to inspections by all federal and state officers authorized by the laws of the United States, a state or territory of the United States or a foreign nation to investigate or prosecute gambling laws.

C. The Department of Public Safety shall maintain a centralized record of illegal gaming machines seized. At least quarterly, the department shall provide a report of the disposition of property previously held by the department to the Commissioner of Administrative and Financial Services and the legislative Office of Fiscal and Program Review. These records must include an estimate of the fair market value of items seized.

**5. Report to court.** A person making final disposition of or destroying an illegal gaming machine or its monetary contents under court order shall report, under oath, to the court the exact circumstances of the destruction or disposition.

**6. Seizure.** An illegal gaming machine together with any monetary contents is contraband and may be seized by any law enforcement officer pursuant to subsection 7 or 8.

**7. Process for seizure.** At the request of the State ex parte, the court may issue any preliminary order or process necessary to seize or secure the property for which forfeiture is sought under this section and provide for its custody.

A. Process for seizure of the property may issue only upon a showing of probable cause. The application for process for seizure of the property and the issuance, execution and return of the process are subject to the provisions of applicable state law.

B. Any property subject to forfeiture under this section may be seized upon process.

**8. Seizure without process.** Seizure without process may be made when seizure is incident to a legal search or inspection if the law enforcement officer has probable cause to believe the property seized is an illegal gaming machine.

## **§ 3946. Criminal forfeiture**

**1. Forfeiture upon conviction of violation.** A person convicted of a violation of this chapter forfeits to the State all rights, privileges, interests and claims to property that is subject to forfeiture pursuant to section 3945. All rights, privileges, interest and title in property subject to forfeiture under this section vest in the State upon the commission of the act giving rise to forfeiture pursuant to section 3945.

**2. Proceeding by indictment.** Property subject to forfeiture that is not yet the subject of a final order pursuant to section 3945 may be proceeded against by indictment or superseding indictment of a grand jury in any related criminal proceeding in which one or more persons with an interest in the property have been simultaneously indicted for one or more violations of this chapter. At any time prior to trial, the State, with the consent of the court and any defendant with an interest in the property, may file an ancillary charging instrument or information alleging that that property is subject to criminal forfeiture. Upon commencement of a criminal forfeiture by indictment or information of any property that may be the subject of any pending civil action commenced pursuant to section 3945, the civil action must be immediately stayed and subrogated to the criminal forfeiture action. Discovery in the criminal action must be as provided by the Maine Rules of Criminal Procedure.

**3. Seizure upon finding of probable cause.** Property subject to forfeiture that has not already been seized but has been indicted by a grand jury pursuant to this section may also be ordered seized based upon the grand jury's finding of probable cause pursuant to section 3945.

**4. Trial against property.** Trial against property charged by indictment or information may be by jury and must be held in a single proceeding together with the trial of the related criminal violation. Forfeiture of the property must be proved by the State by a preponderance of the evidence. The court, in its discretion, may allow any defendant with an interest in property indicted pursuant to this section to waive the right to trial by jury as against the property while preserving the right to trial by jury of any crime alleged. At trial by jury, the court, upon motion of a defendant or the State, may separate the trial of the matter against the defendant from the trial of the matter against the property subject to criminal forfeiture. If the court bifurcates the jury trial, the court shall first instruct and submit to the jury the issue of the guilt or innocence of defendants to be determined by proof beyond a reasonable doubt and shall restrict argument of counsel to those issues. After a verdict upon the guilt or innocence of all defendants, the court shall instruct and submit to the jury the issue of the forfeiture of the property to be determined by proof by a preponderance of the evidence and the court shall restrict argument to those issues. A special verdict must be returned as to the extent of the interest in property subject to forfeiture, if any.

**5. Person interested in forfeited property.** A person not charged in the indictment may not intervene in the criminal action. Following the entry of a verdict of forfeiture of property pursuant to this section or the entry of a guilty plea in open court on the record, the State shall provide written notice

of its intent to dispose of the property to any person known to have alleged an interest in the property. The notice may be by certified, return receipt mail or as otherwise ordered by the court. Receipt by a person then licensed to operate a motor vehicle in the State is presumed when notice is mailed to the last known address of that person on file with the Department of the Secretary of State, Bureau of Motor Vehicles. A person other than the defendant asserting a legal interest in the property within 30 days of the date of receipt of the notice may petition the court for a hearing to adjudicate the validity of any alleged interest in the property. The hearing must be held before the court without jury. The request for the hearing must be signed by the petitioner under penalty of perjury and must state the nature and extent of the petitioner's right, title or interest in the property, the time and circumstances of the petitioner's acquisition of the right, title or interest in the property, any additional facts supporting the petitioner's claim and the relief sought. Upon the filing of any petition for hearing, the court shall schedule the hearing as soon as practicable, but in no event later than 6 months after the petition is filed or after the sentencing of any defendant convicted upon the same indictment. The court shall issue or amend a final order of forfeiture in accordance with its determination if, after the hearing, the court determines that the petitioner has established by a preponderance of the evidence that:

A. The petitioner has a legal right, title or interest in the property and the right, title or interest renders the order of forfeiture invalid in whole or in part because the right, title or interest was vested in the petitioner rather than any defendant or was superior to any right, title or interest to the exclusion of any defendant at the time of the commission of the act that gave rise to the forfeiture of the property under this section; and

B. The petitioner is a bona fide purchaser for value of the right, title or interest in the property and was at the time of purchase reasonably without cause to believe that the property was subject to forfeiture under this section.

**6. Title to property following forfeiture or guilty plea.** Following the entry of a verdict of forfeiture of property pursuant to this section or the entry of a guilty plea in open court on the record, the State has clear title to the property that is the subject of the indictment or information and order of forfeiture and may order all or a portion of the property forfeited to the State to be disposed of pursuant to section 3945.

### **§ 3947. Payment to Attorney General**

As provided in Title 5, section 203, the Department of Public Safety, Bureau of State Police shall pay the Attorney General from the Video Gaming Fund established in section 3934 for legal services provided pursuant to this chapter.

### **§ 3948. Implementation**

A video gaming terminal may not be operated under this chapter before April 1, 2012.

### **§ 3949. Rules**

Rules adopted by the Chief of the State Police pursuant to this chapter are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

**Sec. 9. 22 MRSA c. 276** is enacted to read:

## **CHAPTER 276**

### **COMPULSIVE GAMBLER REHABILITATION**

#### **§ 1700-B. Compulsive Gambler Rehabilitation Fund**

**1. Creation of fund.** The Compulsive Gambler Rehabilitation Fund, referred to in this section as "the fund," is established as a nonlapsing fund to provide rehabilitation services to persons who are compulsive gamblers and are determined to be eligible according to rules adopted by the department under subsection 2.

**2. Administration.** The department shall administer the fund and shall adopt rules as necessary to administer the fund and to determine the criteria for eligible recipients. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

**3. Funds.** In addition to funds deposited pursuant to Title 17, section 3933, the fund may receive money from any source, including grants, gifts, bequests and donations.

**Sec. 10. 28-A MRSA §807** is enacted to read:

#### **§ 807. Notice to Chief of State Police**

The commission shall notify the Chief of the State Police of the suspension or revocation of a license under this chapter. The commission shall also notify the Chief of the State Police of any investigation of a violation of any provision of this Title.

**Sec. 11. 28-A MRSA §1054, sub-§11, ¶C** is enacted to read:

C. A municipality may not combine a permit to operate a video gaming terminal, as defined in Title 17, section 3911, subsection 16, with any other permit. The fee for a permit to operate a video gaming terminal may not be higher than the fee for any other special entertainment permit issued by the municipality.

**Sec. 12. 30-A MRSA §5686** is enacted to read:

#### **§ 5686. Public Education Fund**

In order to aid in financing education services, the Public Education Fund is established. Money in the Public Education Fund must be distributed to each municipality in proportion to the product of the population of the municipality as defined in section 5681, subsection 2, paragraph A multiplied by the property tax burden of the municipality as defined in section 5681, subsection 2, paragraph B.

## **SUMMARY**

This bill allows operation of video gaming terminals by nonprofit organizations that are eligible for games of chance licenses and that are exempt from federal tax under the United States Internal Revenue

Code, Section 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10) or 501(c)(19). These sections of the federal tax code refer to charitable organizations, civic leagues, fraternal benefit societies, domestic fraternal societies and associations and veterans' organizations. Organizations that currently have licenses for electronic video machines but do not qualify under one of those code sections may apply for an initial license while they seek the required federal tax status. The organization applying for the license must own or lease the premises on which the terminals will be placed and must use the premises for its charitable or nonprofit purpose.

Video gaming terminal manufacturers, wholesalers and operators must be licensed by the Chief of the State Police, following background investigations of the applicants and their major business partners. Local approval is required for a license to operate video gaming terminals.

The license specifies the number of terminals allowed on the premises; the maximum number of terminals allowed is 5 per premises of a licensee. Terminals must be licensed by the Chief of the State Police and must be connected to a computer system operated by the Director of the Bureau of Alcoholic Beverages and Lottery Operations within the Department of Administrative and Financial Services. By the end of a 5-year phase-in period, this computer system must provide continuous online monitoring of video gaming terminal activity. Persons under 21 years of age are not allowed to use the machines. Only members of the organization and their guests are allowed to play. The maximum dollar amount for each play is \$5 and the maximum payout is \$1,250. Each game on each machine must return at least 80% of wagers to players, calculated on an annual basis.

Net terminal income, which is income after payback to players, is divided as follows: 8% to the State for payment into the Video Gaming Fund, which is established in the bill, for administrative expenses, gambling rehabilitation, municipal revenue sharing and public education; 2% to the Compulsive Gambler Rehabilitation Fund, which is established in the bill; 15% to the General Fund; 10% to the host municipality; and 65% to the licensee.

Licenses are issued for one year. Applicants for an initial license must pay the actual costs of processing the application and performing the background investigation.